

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 02 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANGEL MARIO GONZALEZ-MEDINA,

Defendant - Appellant.

No. 08-50293

D.C. No. 3:07-cr-00787-DMS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted August 20, 2009^{**}

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

Angel Mario Gonzalez-Medina appeals from the 60-month sentence
imposed following his guilty-plea conviction for illegal entry and misuse of a

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

passport, in violation of 8 U.S.C. § 1325 and 18 U.S.C. § 1544. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

As an initial matter, the government contends that Gonzalez-Medina's appeal is barred by an appeal waiver contained in the plea agreement. The district court's oral pronouncement that Gonzalez-Medina retained the right to appeal rendered the appeal waiver unenforceable. *See United States v. Buchanan*, 59 F.3d 914, 917-18 (9th Cir. 1995).

Gonzalez-Medina contends that the district court erred during sentencing by relying on unreliable hearsay statements contained in the presentence report. The statements relied upon contained sufficient indicia of reliability. *See United States v. Chee*, 110 F.3d 1489, 1492 (9th Cir. 1997). Moreover, the record reflects that the district court considered the challenged statements as only one aspect of an otherwise thorough 18 U.S.C. § 3553(a) analysis. Accordingly, the sentence is procedurally sound and substantively reasonable. *See United States v. Stoterau*, 524 F.3d 988, 999-1002 (9th Cir. 2008).

AFFIRMED.